



AP
2/2/11

THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Applicant:

Dean Rosales

Serial No.: 09/821,563

Filed: March 29, 2001

For: Providing Multiple
Symmetrical Filters

§
§
§
§
§
§
§

Art Unit: 2624

Examiner: Wesley J. Tucker

Conf. No.: 5880

Atty Docket: ITL.0536US
P10841

Mail Stop **Appeal Brief-Patents**
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

REPLY BRIEF

With respect to the Section 112 rejection, the Examiner now accepts that he is reading the word "entirely" before "simultaneously." See Examiner's Answer at page 21.

Moreover, the Examiner believes that "determining" is an event that happens at an instant in time. However, "determining" is a process and it involves a series of acts. Thus, all that is required is that the time periods for the two filters overlap.

This is entirely consistent with normal usage. For example, one definition of "simultaneous," cited by the Examiner, is "exactly coincident." But if the two things are happening during the same time, they are exactly coincident, whether or not one of them extends beyond the other.

With respect to "determining," the Examiner says that the definition is to fix conclusively or authoritatively. But "determining" is not the instant when the decision is made, but the process of making the decision. There is no requirement nor any reasonable basis to conclude that the determination must occur instantaneously.

Date of Deposit: December 27, 2010

I hereby certify under 37 CFR 1.8(a) that this correspondence is being deposited with the United States Postal Service as first class mail with sufficient postage on the date indicated above and is addressed to: Commissioner for Patents, PO Box 1450, Alexandria, VA 22313-1450.

Cynthia L. Hayden
Cynthia L. Hayden

The simple sense of the claim is that the two things must happen at the same time. Thus, if one filter is determined at the same time as the other, they happen simultaneously. It does not matter if some of the determination of one filter continues past the time when the other filters determination has been completed.

Certainly, the Patent Office is required to give the broadest, reasonable interpretation. The broadest, reasonable interpretation is that the determinations occur at the same time, not that they occur entirely at the same time.

Therefore, the Examiner's construction must be rejected and the rejection reversed.


Strangely, in the Section 112 rejection, the Examiner reads "entirely" in the claim and then, in the prior art rejection, reads "simultaneously" out of the claims. This, of course, is directly contrary to the Manual of Patent Examining Procedure which requires that all claim limitations be given a meaning, whether supported by the specification or not. See M.P.E.P. § 2143.03 II. Thus, the rejection is directly contrary to the requirements of the Manual of Patent Examining Procedure. The Examiner had no authority to lessen the weight given to this feature or to read it out of the claim to make out a Section 102 rejection.

In the prior art, the two filters are not calculated during the same time and this is inconsistent with the reasonably broad construction of "simultaneous." Nothing as been cited in Park which demonstrates that they occur at the same time and, in order to be inherent, the result must necessarily flow from the prior art. The Examiner has not met the burden of proof showing that they do occur at the same time and cannot avoid his inability to make out the showing by simply reading the word "simultaneously" out of the claim, based on the contention that it is not adequately supported in the specification.

Therefore, the rejection should be reversed.

Respectfully submitted,

Date: December 27, 2010



Timothy N. Trop, Reg. No. 28,994
TROP, PRUNER & HU, P.C.
1616 S. Voss Road, Suite 750
Houston, TX 77057
713/468-8880 [Phone]
713/468-8883 [Fax]